

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLANT**



76-7288

B R I E F

IN THE

SECOND CIRCUIT COURT OF APPEALS OF THE UNITED STATES

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NO. 76 - 7288  
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B P/S

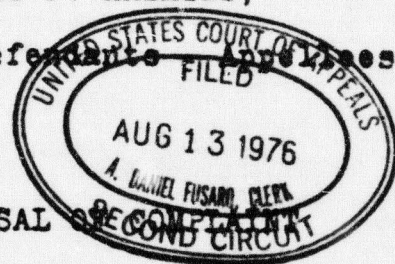
DONALD SCHANBARGER,

Plaintiff - Appellant,

vs.

DISTRICT ATTORNEY OF RENSSELAER COUNTY, DIRECTOR OF DEPARTMENT OF  
MENTAL HEALTH OF RENSSELAER COUNTY, SUPERINTENDENT OF THE NEW YORK  
STATE POLICE, EDWARD A. VIELKIND and CHARLES P. HASKINS,

Defendants - Appellees.



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APPEALED ORDER OF JUDGMENT OF DISMISSAL  
BY THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF NEW YORK  
-----

BRIEF FOR THE APPELLANT, SUBMITTED

Donald Schanbarger  
Pro Se  
Salem, New York 12865

Telephone Number: None

August 2, 1976



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## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The issues are whether the 10th and/or 14th Amendments of the federal Constitution requires:

- (1) All collection of or distribution of information about a person whose criminal conviction by state agent that fails must be given to such deemed guiltless person;
- (2) District Attorney from attempt to present any case without adequate preparation, fairness or candor or obstruction of justice;
- (3) Dismissal of a criminal charge after psychiatric examination over defendant's objection;
- (4) A department of mental health not supply a criminal court a dossier about a defendant before trial;
- (5) A state agent to give a person \$400,000 bond that a charge was not connected with an arrest or search without probable cause;
- (6) A state agent to give a person a \$400,000 bond when arrested that the arrest is with probable cause;
- (7) State court clerks to pay damages for failure to issue process authorized by law;
- (8) State court clerks to give a \$400,000 bond to a person after failure to sign process authorized by law;

Or if federal injunction are a right for such conduct for which a district court must take judicial notice of the federal CONSTITUTION without request.

The framed questions are

(Gen.) Whether a federal court failing to take judicial notice of the United States Constitution without request, violates the personal rights clause of the 8th, 9th, & 10th Amendments and equal protection, prohibited state conduct and due process clauses of the 5th and 14th Amendments of the federal Constitution,



## 2 ISSUES PRESENTED

when every member of the United States judiciary have agreed to support it as a condition of their office as such member?

(1) WHETHER THE GATHERING, RETENTION AND DISTRIBUTION OF INFORMATION ABOUT A PERSON BY A GOVERNMENT AGENCY THRU THE ACTION WITHOUT AUTHORITY OF LAW OF GOVERNMENT AGENTS OF THE STATE VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT, DUE PROCESS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN NO CRIMINAL CHARGE PREVAILS?

(2) Whether a district attorney's office in a state that attempts presentation of any case without adequate preparation, or with want of fairness of candor, or obstructs the administration of justice violates the personal rights clause of the ~~SIXTEENTH~~ 10th Amendment and equal protection, prohibited state conduct and due process clauses of the ~~SIXTEENTH~~ 14th Amendment of the federal Constitution, when a prosecution without probable cause follows an arrest and search without probable cause?

(3) WHETHER A DISTRICT ATTORNEY'S OFFICE IN A STATE THAT PROSECUTES A CRIMINAL CHARGE AFTER A STATE COURT ORDERS A PSYCHIATRIC EXAMINATION CONNECTED THEREOF BEFORE TRIAL OVER SUCH DEFENDANTS OBJECTION VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT, AND DUE PROCESS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN ALL CRIMINAL DEFENDANTS ARE NOT REQUIRED TO SUBMIT TO INTERROGATION BEFORE TRIAL WITH ITS RESIDUE INJURY, AND CIVIL COMMITMENT OF THE MENTALLY ILL OR DEFECTIVE IS AVAILABLE?

(4) Whether a department of mental health in a state that conducts a state court ordered psychiatric examination of a criminal defendant under a criminal prosecution and supplies such court with a dossier about such defendant, violates the personal rights clause of the 10th Amendment and equal protection, prohibited state conduct and due process clauses of the 14th Amendment of the federal Constitution, when all criminal defendants are not required to submit to interrogation before trial with its residue injury, and civil commitment of the mentally ill or defective is available?

(5) WHETHER THE PREPARATION OF A CRIMINAL COMPLAINT OR INFORMATION ABOUT A PERSON BY A STATE AGENT WHO DOES NOT GIVE TO SUCH PERSON WHO COULD BE EXPECTED TO SUFFER THE INTRINSIC DAMAGES OF SUCH PROSECUTION, A BOND THAT SUCH CHARGE IS NOT THE OUTGROWTH OR CONNECTED OR RESULTS OF AN ARREST OR SEARCH WITHOUT PROBABLE CAUSE AND AUTHORITY OF LAW OF A STATE AGENT VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT, AND DUE PROCESS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN THE STATE HAS NO DEMONSTRATABLE WAY FOR A PERSON TO COLLECT FULL DAMAGES OF A CRIMINAL PROSECUTION THAT IS THE RESULTS OR FOLLOW ARREST AND/OR SEARCH WITHOUT PROBABLE CAUSE OR AUTHORITY OF LAW ON THE PART OF STATE AGENTS?



(6) Whether the arrest of a person by a state agent who does not give to such person who will suffer the intrinsic damages of such arrest, a bond that such arrest is/or was not without probable cause and/or the outgrowth or connected or result of action of any state agent without authority of law, violates the personal rights clause of the 10th amendment and equal protection, prohibited state conduct and due process clauses of the 14th amendment of the federal Constitution, when the state has no demonstratable way for a person to collect full damages of a arrest by a state agent that is the results of follows action of a state agent that is without probable cause and authority of law?

(7) WHETHER THE FAILURE OF CLERKS OF A STATE JUDICIARY TO SIGN PAPERS THAT ARE AUTHORIZED BY STATE LAW TO SIGN WHICH IN EFFECT CONVEY A RIGHT THAT OTHERS ENJOY AS A RIGHT WITHOUT ANY LEGAL HOCUS POCUS, VIOLATES THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT, AND DUE PROCESS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN A STATE JUDICIARY CLERKS FAIL TO SIGN PAPERS AS A FUNCTION AND DUTY OF THEIR OFFICE WHEN A PERSON HAS A RIGHT UNDER STATE LAW FOR JUDICIAL PAPERS THAT OTHER PEOPLE OBTAIN LIKE STATE JUDICIAL PROCESS WITHOUT QUESTION SUBJECT TO QUESTION ONLY AFTER ISSUE AND SERVICE?

(8) Whether the failure of clerks of a state judiciary to post a performance bond with a person they fail to issue process for, violates the equal protection, prohibited state conduct, and due process clauses of the 14th amendment of the federal constitution when state judiciary clerks continue in office after failure to sign process as a function and duty of their office they are authorized by state law to issue when a person has a right under state law for judicial process that other people obtain like state judicial process without question subject to question only after issue and service?

#### STATEMENT OF THE CASE

This case is for injunctions for alleged violations of 42 U.S.C. Sec. 1983 (A. 1). Before answer defendants moved for dismissal (A. 18-20 & 21-9) of the Complaint (A. 1-14) with 8 causes of action, which over the plaintiff's objection (A. 20-1) as well as his move for a DEFAULT JUDGMENT as SUPERINTENDENT OF THE NEW YORK STATE POLICE (A. 21) was dismissed by Judge Foley of the Northern District of New York at the time of the motions in open Court without written opinion.



#### 4 STATEMENT OF THE CASE

Plaintiff's basis for a default judgment is 2-27-76 (A. 31) service of COMPLAINT with apperance papers (A. 21-9) dated 4-27-1976.

Money judgment of \$46,000 is sought (A. 13) against EDWARD VIELKIND & CHARLES HASKINS for failure to perform their claimed duties as court clerks to issue judicial process.

The plaintiff was arrested, searched & charged with LOITERING in 1968 by New York State Police whos charge was prosecuted by the office of the District Attorney of Rensselaer County who cause him to suffer questions into the criminal charge by the DIRECTOR OF DEPARTMENT OF MENTAL HEALTH OF RENSSELAER COUNTY thru court ordered psychiatric examination with the implied threat that failure to answer would result in commitment to a mental ward. Plaintiff was convicted and fined \$10., he appealed to county court which affirmed, was appealed to the N.Y.S. Court of Appeals which reversed the conviction finding that he had not done a criminal act. Plaintiff's suit at state court to recover damages resulted in dismissal of Compaint as to assistant district attorney and psychiatrist thru quasi judicial immunity, a \$5,000. for illegal arrest, and dismissal of Compaint for the ciminal prosecution with the N.Y.S. Court of Appeals finding of effect that cause of action with criminal prosecution must allege and prove state of mind for malicious prosecution for police power use without a victim that follows illegal arrest by state agents without authority.

Plaintiff prepared to collect by enforcement the \$5,000 judgment in 1975 by asking VEILKIND & HASKINS twice to sign INFORMATION SUBPOENA and RESTRAINING NOTICE, which were not signed, after such



delay plaintiff brought on a motion in state court for an order directing the State Trooper to pay the judgment which was denied and is now under appeal. Judgment is still unpaid.

## POINT 1.

THE COMPLAINT S H O W S RECOGNIZABLE VIOLATIONS OF THE FEDERAL CONSTITUTION BY THOSE GIVEN THE SITUATION OF FRANCHISED CRIMINALS BY THE STATE.

This case need not show exhausted State remedies (CARTER v STRANTON, 405 US 669), is one of others for the exercise of paper remedies thru the expected Doctrine of Waste. The standard illegal acts of state and federal agents under the guise of Law & Order are so well known to this Court it would seem little use to go over them at length. The questions of the causes clearly show the objections of the federal Constitution and with judicial notice. Under PEO. v RUTIGLANO, 261 NY 103 a subject under criminal action need not and should not answer questions. Police must obey the law thru SPANO v N.Y., 360 US 315. Since police, public prosecutors and judges laugh at law (Constitutions) as noted in PEO. v REILLY, 105 NYS 2d 845, they as franchised Criminals lack standing to pretend to uphold law. Since a so called peace officer can present his own criminal case under PEO. v SILVERS, 19 NY 2d 77 NYS 2d 107 as State agent, no one from the D.A.'s office is needed.

Justice Burger has publicly said there is no remedy against police abuse. One would wonder if resistance to the abuses of the "Law & Order Establishment" of which courts are a part of the engine of oppression, are programmed to failure or at best pursued



## 6 POINT 1: & CONCLUSION

at a money loss without substance result. The non-jury state trial to recover the damages of the plaintiff's damages of 1968 with its residued were clearly more then \$5,000. The members of the "Law & Order Establishment" found it profitable to put him thru the wrigger, but he is not to make money on the affair or to recover damages. Not only did not the plaintiff not recover full damages following an illegal arrest by state agents, no on else does. Members of a district attorney's office as a matter of practice posecute victim of government agents, presumably in interest of career. The prosecution of known innocent Charles Chaplin by Carr (THE BENCHWARMERS, Coulden p. 336). Psychiartic exmination of criminal defendants for discovery is a common practice of prosecutors (PSYCHIATRIC JUSTICE, Szasz) whether information is defective as this case or no information (Carpenter v Rochester, 67 Misc. 2d 832), of course one need not answer questions (Harris v N.Y.), but courts including appellate (Savage v Maryland, 308 A. 2d 701) ignore that. Misuse of power, possed by vitue of state law and made possible only because the wrong doer is clothed with the authority of state law is action taken under color of state Law (Wheeler v Glass, 473 F. 2d 983).

## C O N C L U S I O N

The appealed Order granting dismissal of the Complaint should be reversed.

SUBMITTED,

*Donald Schanbarger*  
Donald Schanbarger  
Plaintiff - Appellant  
Salem, New York 12865



AFFIDAVIT OF SERVICE

STATE OF NEW YORK, WASHINGTON COUNTY SS.:

GEORGE FERGUSON, being duly sworn, deposes and says, that on the 9 day of August, 1976, he served the within papers upon Marvin I. Honig, Esq. and Louis J. Lefkowitz, Esq. by enclosing <sup>each,</sup> two copies thereof in a securely sealed postpaid wrapper/addressed as follows:

Marvin I. Honig, Esq.  
Rensselaer County Courthouse  
Troy  
New York 12180

Louis J. Lefkowitz, Esq.  
The Capitol  
Albany  
New York 12224

by depositing the same in the post office box regularly maintained by the United States Government at SALEM, N.Y.

George Ferguson  
George Ferguson

Sworn to before me this 9th day  
of August, 1976.

David A. Ennis Jr.  
Notary Public Expires: 03-30-78;  
Washington County, New York: